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In re Application of :
GAN, Zhino :
U.S. Application No.: 10/088,532 :
PCT No.: PCT/CA00/01153 : DECISION
Int. Filing Date: 03 October 2000 :
Priority Date: 04 October 1999 :
Attorney Docket No.: 67473/RSM :
For: NON-SEPARATION HETEROGENOUS ASSAY :
FOR BIOLOGICAL SUBSTANCES :

This is a response to applicant's "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" filed 11 September 2002.

BACKGROUND

On 03 October 2000, applicant filed international application PCT/CA00/01153. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 12 April 2001. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 04 April 2001.

On 03 April 2001, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia: the basic national fee; a copy of the international application; a preliminary amendment; and an unexecuted declaration and power of attorney.

On 02 July 2001, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENT UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a signed oath/declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) together with a surcharge payment were required. Furthermore, the Notification indicated that a Sequence Listing had not been filed as required by 37 CFR 1.821(c) and (e).

On 10 May 2001, applicant filed a combined declaration and power of attorney executed by the inventors and a statement that "the subject application does not disclose any specific nucleotide and/or amino acid sequences . . . no sequence listing as set forth in 37 CFR 1.821(c) and (e) are required."

DISCUSSION

The Notification of Missing Requirements (Form PCT/DO/EO/905) mailed 02 July 2001 indicated that the nucleotide and/or amino acid sequence disclosure contained in this application does not comply with the requirements set forth in 37 CFR 1. 1.821- 825. Applicant states, "the subject application does not disclose any specific nucleotide and/or amino acid sequences . . . no sequence listing as set forth in 37 CFR 1.821(c) and (e) are required." Applicant's assertion is correct that there is no need to file a sequence listing for the present application. As such, the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) mailed 02 July 2001 is vacated in part.

CONCLUSION

Applicant's request that the requirement for a sequence listing to be withdrawn is **GRANTED**.

The application has an international filing date of 03 October 2000 under 35 U.S.C. 363 and a 35 U.S.C. 371(c) date of **11 September 2002**.

This application is being returned to the United States/Elected Office for processing in accordance with this decision.



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